



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Cycad Corporation

**File:** B-255870

**Date:** April 12, 1994

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Administration, for the agency.  
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the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

1. Compelling reason exists to cancel an invitation for bids after bid opening where the agency determines that the specifications on which the competition was based erroneously sought design of components when agency's minimum need was for commercial off-the-shelf items.

2. Protest alleging bad faith must present convincing evidence since procurement officials are presumed to act in good faith.

### DECISION

Cycad Corporation protests the cancellation after bid opening of invitation for bids (IFB) No. 10-93-0078, issued by the National Aeronautics and Space Administration (NASA), for various computer components. Cycad contends that it should receive the contract because NASA's rationale for canceling the IFB was contrived in bad faith.

We deny the protest.

The IFB, a small business set-aside, was one of three issued by NASA to obtain components which the agency intends to incorporate into a new mission operations communications system (MOCS-2) for installation at the Kennedy Space Center (KSC). The system is intended to provide a touch screen controlled, mission critical launch operations support system for expendable launch vehicle operations.

The solicitation sought bids on 154 STD-32 bus CPU cards, 89 each STD-32 bus VGA flat panel displays and display controller cards, 89 touch screens for the displays, and a development support package (i.e., one set of integrated

hardware, software, and documentation for use by NASA for software development).<sup>1</sup> The IFB provided several pages of specifications which listed required features for each line item. Award was to be made on an aggregate basis.

Seven firms including Cycad submitted bids. The low bid was rejected as nonresponsive. NASA then conducted a pre-award survey of Cycad, the second-low bidder. The pre-award survey revealed, among other matters, that Cycad intended to design its own components and subcontract production to two other firms, since Cycad has no production facilities of its own. When NASA technical personnel realized that Cycad intended to furnish developmental items, specially designed for this contract, they reviewed the specifications. From this review, NASA procurement personnel determined that the IFB was deficient.

According to NASA, the specifications were prepared with the assumption that commercial off-the-shelf (COTS) products, with demonstrated performance capabilities, would be proposed, and it had intended to include a requirement for COTS in the IFB. Since COTS had been assumed, the specifications were deficient for development of the components; they lacked necessary design details, design review procedures, functional and durability requirements, and many other features necessary to meet the government's minimum requirements. The specification for the flat-panel display and touch screen were also found to be defective in requiring contractor integration of the items, when the requirement was for separate, but mechanically compatible, components. Based upon the identified deficiencies, NASA canceled the IFB and plans to reissue it after revision of the specifications.

In its protest, Cycad raises a number of issues centered around its belief that COTS is not a minimum need of NASA and was contrived in bad faith to eliminate Cycad and other bidders from a procurement which NASA intends to award sole source to a "preferred vendor." According to Cycad, the components offered in its bid meet all of NASA's requirements at the lowest price, and thus, it is entitled to the award. In essence, Cycad's protest challenges the validity of NASA's position that its minimum need is for COTS.

The determination of an agency's minimum needs and the best method of accommodating them is primarily within the agency's discretion and therefore, we will not question such

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<sup>1</sup>STD-32 is a registered trademark of Ziatech Corporation. Ziatech and Versalogic Corporation were listed in the specifications as suggested vendors.

a determination unless the record clearly shows that it was without a reasonable basis. Isratex, Inc., B-253691, Oct. 13, 1993, 93-2 CPD ¶ 221. An agency may include restrictive provisions or conditions in a solicitation only to the extent necessary to satisfy the agency's needs. Admiral Towing and Barge Co., B-245600; B-245602, Jan. 16, 1992, 92-1 CPD ¶ 83. Where a protester alleges that a requirement is unduly restrictive, we review the record to determine whether the requirement has been justified as necessary to satisfy the agency's minimum needs. Id.

According to NASA, COTS products are required in order to reduce maintenance manpower requirements by utilizing industry standard parts which can be repaired by the vendor following initial purchase, to provide for field tested and proven components, to minimize government time spent preparing detailed design specifications, and to eliminate nonrecurring costs required when additional manuals, design reviews, and other requirements are levied by the government on new design efforts. COTS parts are also required to meet more stringent schedule requirements to implement full operational capability for the MOCS-2 system, reduce schedule and technical risks to the project, and provide multiple vendor sources capable of providing equivalent competitive products on short notice.

With regard to technical risks, NASA states that the MOCS-2 is a mission critical, safety related communications system of which the touch screen is an integral part. According to NASA, its minimum needs include a COTS touch screen--the critical interface in the launch communications system--with demonstrated performance capabilities. Unanticipated problems in a non-COTS touch screen could jeopardize launch vehicles. In view of the safety and reliability considerations involved, we think that NASA has a reasonable basis for concluding that its minimum needs include COTS components for the MOCS-2 system.

Cycad argues that a COTS specification will eliminate it from the competition because it does not produce COTS components meeting NASA's specifications. Where, as here, a specification represents an agency's minimum needs, the fact that not every potential competitor is able to meet that specification does not demonstrate an impropriety. CardioMetrix, B-242678; B-242678.2, May 17, 1991, 91-1 CPD ¶ 477. Moreover, since Cycad intended to subcontract its production of the components for this contract, we fail to see why it cannot compete in a resolicitation by obtaining COTS components from other firms.

With regard to cancellation of the IFB, because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed, a

contracting agency must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1); Adrian Supply Co., B-246207.2; B-246207.3, Mar. 13, 1992, 92-1 CPD ¶ 282. In this regard, where an IFB does not contain specifications that reflect the agency's actual needs, the agency has a compelling basis for cancellation after bid opening. Id.; FAR § 14.404-1(c)(1); Environmental Safety Consultants, Inc., B-241714, Feb. 26, 1991, 91-1 CPD ¶ 213. More specifically, where an agency's minimum need is for COTS items, but its solicitation as issued specifies a specially designed system, a compelling basis for cancellation exists. Instrument & Controls Serv. Co., B-231934, Oct. 12, 1988, 88-2 CPD ¶ 345. Since, as discussed above, the IFB here did not include the agency's minimum need for COTS, we conclude that NASA had a reasonable basis for canceling the IFB.<sup>2</sup>

While Cycad maintains that its components will meet or exceed all stated and unstated specifications, at a lower price than bids offering COTS items, an award to Cycad would be inappropriate. First, since Cycad's products do not meet the COTS requirement, a minimum need of the agency, its lower price is irrelevant. Second, it would be unfair to other bidders, unaware of the agency's actual specifications, to award the contract without allowing them the opportunity to take those specifications into account in preparing their bids.

Cycad alleges that NASA's statement of its minimum needs and the decision to cancel the solicitation were contrived in

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<sup>2</sup>Moreover, as originally issued, the IFB's specifications were inadequate even for preparing a fully responsive bid for a developmental item. For example, the touch screen specifications omitted a number of common characteristics which represent the agency's minimum requirements including: a sealed bezel, material durability requirements, firmware functionality including touch point averaging, failed beam capability, and host processor reset.

Cycad alleges that it would have provided these features, which in fact represent proprietary features of Cycad's touch screen of which NASA learned during its pre-award survey. Although Cycad maintains that the agency is improperly using these Cycad design features, we have ascribed no weight to this allegation since elsewhere in its protest submissions, Cycad admits that another firm, bidding all COTS components offered a touch screen which "include[s] these features and more." Since at least one other bidder offers these features in a COTS item, the protester has not established that the origin of these requirements was the protester's proprietary information.

had faith to exclude the protester. Specifically, Cycad observes that the IFB did not mention COTS and provided a delivery period long enough to allow development of new items; NASA mentioned a prototype CPU card in conjunction with the pre-award survey; and NASA has accepted developmental items on two procurements for other MOCS-2 components.

Procurement authorities are presumed to act in good faith and, in order for our Office to conclude otherwise, the record must show that procuring officials intended to injure the protester. SDA Inc., B-248528.2, Apr. 14, 1993, 93-1 CPD ¶ 320. From our review of the record, we find no evidence of bad faith on the part of NASA. On the contrary, the agency has provided reasonable explanations for each of Cycad's observations, and Cycad's inference of bad faith is insufficient to prove its claim. See Caldwell Consulting Assocs., B-252590, July 13, 1993, 93-2 CPD ¶ 18.

For example, NASA explains that the failure to mention COTS in the IFB was a mistake, due to miscommunication between the procuring and technical personnel regarding the minimum needs of the agency. The need for COTS predates the procurement by at least 2 years as evidenced by NASA's draft MOCS-2 acquisition plan which identifies COTS as the acquisition method for all the components solicited in the IFB.

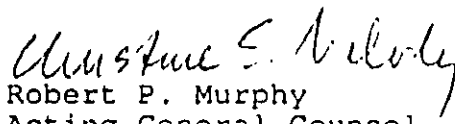
With regard to the 180-day delivery schedule, NASA explains that the time provided is solely for manufacture of the production quantities of the various components, not development of the components. Since the IFB requires delivery in 30 days of one set of components for software development, any component development would have to be accomplished in that time frame. In view of the lack of complete design specifications and the lack of any provision for development support and design reviews, NASA explains that 30 days is inadequate for development of the components. While NASA acknowledges that it discussed a prototype CPU card in a letter scheduling Cycad's pre-award survey, it explains that in view of its need for COTS components, it never contemplated special development of a CPU card. Although Cycad argues that it could meet the agency's actual needs by supplying its own designed components, at the pre-award survey, Cycad requested extra time to produce a prototype of its touch screen. Under these circumstances, we agree that the IFB provided insufficient time for such development.

With regard to acceptance of developmental items in other MOCS-2 procurements, NASA explains that it preferred COTS components but that it did not cancel those procurements when the awardees offered some non-COTS items. In one

procurement (IFB No. 10-93-80) won by Cycad, NASA found Cycad's bid for card cages and power supplies acceptable because the power supplies were COTS and the Cycad designed card cages were low risk since Cycad had previously manufactured similar items and the total dollar value of the procurement was significantly less than that here. In the other procurement (IFB No. 10-93-79) for graphics cards, NASA explains that the awardee had developed the cards and had provided them in COTS applications since 1992, well before the award in September 1993. In any event, since each procurement is a separate transaction, the agency's past acceptance of non-COTS components does not prevent it from determining that such items do not meet its minimum needs here. See Diversified Energy Sys; Essex Electro Eng'rs, Inc., B-245593.3; B-245593.4, Mar. 19, 1992, 92-1 CPD ¶ 293.

Although Cycad contends that NASA intends to award the contract sole source to a "preferred" vendor, we find nothing apart from Cycad's supposition to support its claim. For example, while the IFB listed two manufacturers as "suggested" vendors, there is no evidence that NASA has a preference for either. In fact, one firm advised NASA, prior to bid opening, that neither of the suggested vendors appeared able to meet a touch screen viewing angle requirement specified in the IFB. In response, NASA issued an amendment naming two other vendors able to meet the specification. Further, while there is a bidder between Cycad and one of the "preferred" vendors which bid all COTS items, NASA's failure to award it a contract is not evidence of an intent to award a sole-source contract. As we explained above, to have made such an award would have been unfair to other bidders, including Cycad, which were unaware of the agency's actual needs.

The protest is denied.

  
for Robert P. Murphy  
Acting General Counsel